

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>ROGELIO TORRES,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 1:20-cv-119-SPB-RAL</b>
	)	
<b>BRADLEY TRATE,</b>	)	
	)	
<b>Respondent.</b>	)	

## MEMORANDUM ORDER

Petitioner Rogelio Torres, an inmate at the McKean Federal Correctional Institution, filed this civil action seeking a writ of habeas corpus pursuant to 28 U.S.C. §2241. The petition was lodged by the Clerk of Court on May 19, 2020 and filed of record on July 8, 2020. ECF Nos. 1, 5. Respondent Bradley Trate filed his response to the instant petition on October 5, 2020. ECF No. 11. The matter has been referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and the Local Rules for Magistrate Judges.

On October 12, 2021, Magistrate Judge Lanzillo issued an R&R recommending that the instant petition be construed as a request to file a second or successive motion to vacate pursuant to 28 U.S.C. §2255 and transferred to the United States Court of Appeals for the Eleventh Circuit for further consideration in that regard. ECF No. 12. The Magistrate Judge noted Petitioner's assertion that the United States Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019), created a new and retroactive rule of constitutional law which invalidated his conviction and sentence under 18 U.S.C. §924(c)(1). Judge Lanzillo concluded that this Court lacks jurisdiction to accord relief under 28 U.S.C. §2241 because: (i) Petitioner is challenging the

validity of his conviction and sentence, and (ii) he has a direct avenue for relief under 28 U.S.C. §2255. Although Judge Lanzillo determined that this Court lacks jurisdiction to issue a writ pursuant to 28 U.S.C. §2241, he recommended that, instead of dismissing the instant petition, this Court transfer the matter to the U.S. Court of Appeals for the Eleventh Circuit for a determination as to whether the instant petition can be treated as a request for leave to file a second or successive §2255 motion, consistent with 28 U.S.C. §2244. Judge Lanzillo opined that, in the interest of justice, this Court should transfer the matter to the Eleventh Circuit pursuant to 28 U.S.C. §1631 so that Petitioner's filing date is preserved.

Objections to the R&R were due on October 29, 2021. As of the date of this Order, no objections have been received.

After *de novo* review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 21st day of December, 2021, the Court having determined that it lacks jurisdiction to afford relief under 28 U.S.C. §2241, and having further determined that the instant petition may be properly construed as a request for leave to file a second or successive motion to vacate under 28 U.S.C. §2255,

IT IS ORDERED that, pursuant to 28 U.S.C. §1631, and in the interest of justice, the Clerk shall TRANSFER forthwith the within petition for a writ of habeas corpus, ECF No. [5], to the United States Court of Appeals for the Eleventh Circuit for further proceedings as that Court may deem fit.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on October 12, 2021, ECF No. [12], is hereby adopted as the opinion of this Court.

As there are no further matters pending before the Court relative to the instant petition,  
the Clerk is directed to mark this case "CLOSED."

A handwritten signature in cursive script, reading "Susan Paradise Baxter".

SUSAN PARADISE BAXTER  
United States District Judge

cm: Rogelio Torres  
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McKean Federal Correctional Institution  
Inmate Mail/Parcels  
P.O. Box 8000  
Bradford, PA 16701  
(via U.S. Mail)

Karen Gal-Or, AUSA (via CM/ECF)

The Honorable Richard A. Lanzillo (via CM/ECF)